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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

In re J.S., A Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.S., Defendant and Appellant.	B312982 Los Angeles County Super. Ct. No. VJ46657

APPEAL from an order of the Superior Court of Los Angeles County, Geanene M. Yriarte, Judge. Reversed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, David E. Madeo and Roberta L. Davis, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

"When an officer reasonably suspects that an individual whose suspicious behavior he or she is investigating is armed and dangerous to the officer or others, he or she may perform a patsearch for weapons. (*Terry v. Ohio* [(1968)] 392 U.S. [1,] 24, 30; *Giovanni B. v. Superior Court* (2007) 152 Cal.App.4th 312, 320; *People v. Dickey* (1994) 21 Cal.App.4th 952, 955-956; *People v. Garcia* (2006) 145 Cal.App.4th 782, 786.) The sole justification for the search is the protection of the officer and others nearby, and the search must therefore be confined in scope to an intrusion reasonably designed to discover weapons. (*Terry v. Ohio, supra*, at p. 29.) A patsearch is a 'serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.' (*Id.* at p. 17, fn. omitted.) On the other hand, law enforcement officers have a legitimate need to protect themselves even where they may lack probable cause for an arrest. (*Id.* at p. 24.) The officer has an immediate interest in taking steps to ensure that the person stopped 'is not armed with a weapon that could unexpectedly and fatally be used' against the officer. (*Id.* at p. 23.)" (*In re H.M.* (2008) 167 Cal.App.4th 136, 143.)

"American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded." (*Terry v. Ohio, supra,* 392 U.S. at p. 23) Thus, we do "not lightly second-guess a police officer's decision to perform a patdown search for officer safety. The lives and safety of police officers weigh heavily in the balance of competing Fourth Amendment considerations." (*People v. Dickey, supra*, 21 Cal.App.4th at p. 957.)

"[A] frisk for weapons is not justified unless the officer can point to specific and articulable facts which, considered in conjunction with rational inferences to be drawn therefrom, give rise to a reasonable suspicion that the suspect is armed and dangerous. [Citations.]" (*People v. Medina* (2003) 110 Cal.App.4th 171, 176-177.) "[T]he officer need not be absolutely certain that the individual is armed; the crux of the issue is whether a reasonably prudent person in the totality of the circumstances would be warranted in the belief that his or her safety was in danger." (*People v. Avila* (1997) 58 Cal.App.4th 1069, 1074.) "Reasonable suspicion must be based on 'commonsense judgments and inferences about human behavior.' (*Illinois v. Wardlow* [(2000)] 528 U.S. [119,] 125.) The determination of reasonableness is 'inherently case-specific.' (*People v. Durazo* [(2004)] 124 Cal.App.4th [728,] 735.) An inchoate and unparticularized suspicion or hunch is not sufficient, nor is the fact the officer acted in good faith. (*Terry v. Ohio, supra*, 392 U.S. at pp. 22, 27.) Where specific and articulable facts are absent, the patsearch cannot be upheld. (*People v. Dickey, supra*, 21 Cal.App.4th at p. 956.) Whether a search is reasonable must be determined based upon the circumstances known to the officer when the search was conducted. (*In re Jaime P.* (2006) 40 Cal.4th 128, 133.)" (*In re H.M.*, *supra*, 167 Cal.App.4th at pp. 143-144.) "A detention may not be justified after the fact on a subsequently contrived basis not relied on by the officer at the time the events occurred. [Citation.]" (*People v. Aldridge* (1984) 35 Cal.3d 473, 480.) Nor can the fact that a weapon ultimately was found during a patsearch serve as justification for the search. (*People v. Brown* (1955) 45 Cal.2d 640, 643 ["a search . . . cannot be justified by what it turns up"].)

In this case, J.S., a minor, admitted to illegally possessing a firearm after the juvenile court denied his motion to suppress evidence of a handgun discovered during a patsearch. He appeals from jurisdiction and disposition orders entered by the juvenile court. (Welf. & Inst. Code, § 800.)

On appeal, J.S. contends the juvenile court erred by denying his suppression motion. We agree. Based on our independent review of the undisputed facts, we conclude the officer who conducted the patsearch did not present specific and articulable facts to support a reasonable suspicion that J.S. was armed and dangerous. Accordingly, we reverse the jurisdiction and disposition orders and remand the matter to the juvenile court for further proceedings consistent with this opinion.

BACKGROUND

In March 2021, the Los Angeles County District Attorney filed a petition against J.S. under section 602 of the Welfare and Institutions Code[1] alleging one count of possession of a firearm. J.S., born in 2003, was 17 years old. At the time of the offense, J.S. was on probation on two prior petitions for second degree robbery (Pen. Code, § 211; March 2019 petition), first degree residential burglary (Pen. Code, § 459; April 2019 petition), and fleeing a pursuing police officer's motor vehicle while driving recklessly (Veh. Code, § 2800.2; April 2019 petition).

In May 2021, J.S. moved to suppress the firearm found on him during what he alleges was an unlawful patsearch. The prosecution opposed the motion.

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1 Subsequent undesignated statutory references are to the Welfare and Institutions Code.

At the May 2021 hearing on J.S.'s motion, the prosecution called Los Angeles County Sheriff's Detective Joseph Sanchez as a witness. Detective Sanchez testified that in February 2021, he began surveilling an Elantra and its driver as it was believed the car and the driver were involved a series of purse snatch robberies. On the afternoon of February 25, 2021, Detective Sanchez instructed Deputy Albert Murad to drive his marked patrol car into a grocery store parking lot where the Elantra was located.

The prosecution also called Deputy Murad as a witness. He testified his patrol car and the Elantra approached an intersection in the parking lot and stopped perpendicular to each other. Deputy Murad motioned with his hand for the Elantra to go. The Elantra hesitated, but then moved. Deputy Murad could not see the driver because the Elantra's windows were tinted in violation of Vehicle Code section 26708. Deputy Murad pulled the Elantra over for the window tint violation by activating his patrol car's lights. The Elantra went about 20 or 30 more feet, then pulled into a parking space.

Deputy Murad got out of his car, approached the Elantra, and knocked on the driver's side window. When the window rolled down, Deputy Murad immediately smelled a very strong odor of burnt marijuana. When Deputy Murad asked the driver if he was on parole or probation, the driver said he was on parole. Deputy Murad ordered the driver out of the car, conducted a patsearch, and placed him inside the patrol car.

Deputy Murad then went to the passenger side of the Elantra. The passenger window was rolled up. Deputy Murad opened the door and asked the passenger, J.S., if he was on parole or probation. J.S. said he was on probation, but did not

identify the crime for which he was on probation. Deputy Murad admitted he did not know the conditions of J.S.'s probation.

Because J.S. was on probation and because of the smell of burnt marijuana, Deputy Murad asked J.S. to step out of the vehicle. J.S. complied. Once J.S. was out of the vehicle, Deputy Murad placed J.S.'s hands behind his back. Deputy Murad then "conducted a quick sweep of [J.S.'s] waistband" for officer safety. Deputy Murad testified he was concerned about his safety because the Elantra was being surveilled in connection with a robbery. Deputy Murad stated he was concerned the occupants were armed. While patting J.S. down, Deputy Murad felt a pistol grip in the front of J.S.'s waistband. Deputy Murad instructed J.S. not to move. J.S. complied. Deputy Murad took the firearm from J.S.'s waistband, placed J.S. in handcuffs, and arrested him.

Following the officers' testimony and argument by counsel, the juvenile court denied the motion to suppress. Thereafter, J.S. admitted the petition. The juvenile court sustained the petition, declared J.S. a ward of the court, and ordered him to remain on probation under the previously imposed conditions.

J.S. filed a timely notice of appeal from the denial of his suppression motion.

DISCUSSION

J.S. contends the juvenile court erred in denying his suppression motion because (1) the patsearch cannot be upheld as a valid probation search as Deputy Murad was unaware whether J.S. was subject to a probationary search condition[2] and

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2 We do not address J.S.'s argument that the warrantless patsearch was invalid as a probation search as the Attorney General concedes the search was not a probation search.

(2) Deputy Murad offered no specific and articulable facts to support a reasonable suspicion that J.S. was armed and dangerous.

The Attorney General maintains "under the totality of circumstances, Deputy Murad had a reasonable suspicion" justifying the patsearch. These circumstances, according to the Attorney General, are (1) Deputy Murad knew the Elantra was being surveilled due to its involvement in a robbery, (2) J.S.'s nervous demeanor caused Deputy Murad to believe he was involved in illegal activity and possibly armed, (3) Deputy Murad was alone when he conducted the stop, and (4) Deputy Murad smelled the odor of freshly burnt marijuana coming from the entire car.

A. Governing Law and Standard of Review

"The Fourth Amendment of the United States Constitution guarantees the right to be free of unreasonable searches and seizures by law enforcement personnel. (*Terry v. Ohio*[*, supra,*] 392 U.S. 1, 8-9 [ ].) If an officer has a reasonable suspicion, supported by specific and articulable facts, that criminal activity is afoot, the officer may conduct a brief, investigative stop. (*Id.* at pp. 21-22.) Additionally, if the officer conducting the so-called *Terry* stop believes the suspect is armed and dangerous, the officer may perform a limited search of a person's outer clothing for weapons, i.e., a patsearch, whether or not the officer has probable cause to arrest. (*Id.* at pp. 27, 30.)" (*In re Jeremiah S.* (2019) 41 Cal.App.5th 299, 304 (*Jeremiah S.*).)

"The principles governing patsearches are settled. (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 373 (*Dickerson*).) [As noted above,] [b]ecause a patsearch 'is a serious intrusion

upon the sanctity of the person, which may inflict great indignity and arouse strong resentment,' it is subject to Fourth Amendment restrictions and 'not to be undertaken lightly.' (*Terry* [*v. Ohio*], *supra,* 392 U.S. at p. 17.) The 'sole justification' of the patsearch 'is the protection of the police officer and others nearby.' (*Id.* at p. 29.) Its purpose "'is not to discover evidence of crime, but to allow the officer to pursue his [or her] investigation without fear of violence.'" (*Dickerson,* at p. 373.) Such a search—which is 'permitted without a warrant and on the basis of reasonable suspicion less than probable cause—must be strictly "limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.'" (*Ibid.*, quoting *Terry* [*v. Ohio*], at p. 26.)" (*Jeremiah S.*, *supra*, 41 Cal.App.5th at pp. 304-305.)

"The validity of a patsearch depends on the totality of the circumstances and turns on whether 'a reasonably prudent [person] in the circumstances would be warranted in the belief that his [or her] safety or that of others was in danger.' (*Terry* [*v. Ohio*], *supra*, 392 U.S. at p. 27; see *People v. Avila* (1997) 58 Cal.App.4th 1069, 1074.) This requires that the officer provide 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.' (*Terry* [*v. Ohio*], at p. 21.) In this regard, 'due weight' is given to the specific reasonable inferences that the officer 'is entitled to draw from the facts in light of his [or her] experience.' (*Id.* at p. 27.) Although the officer need not be 'absolutely certain' the individual is armed, an 'inchoate and unparticularized suspicion or "hunch"' is insufficient. (*Ibid.*) Moreover, a protective search that 'goes beyond what is necessary to determine if the suspect is armed . . . is no longer valid under *Terry* and its fruits will be

suppressed.' (*Dickerson, supra,* 508 U.S. at p. 373.)" (*Jeremiah S., supra,* 41 Cal.App.5th at p. 305.)

"Considerations relevant to this inquiry typically include visible bulges or baggy clothing that suggest a hidden weapon; sudden movements or attempts to reach for an object that is not immediately visible; evasive and deceptive responses to an officer's questions about what the individual was doing; and unnatural hand postures that suggest an effort to conceal a weapon. (*Thomas v. Dillard* (9th Cir. 2016) 818 F.3d 864, 877 (*Thomas*).) Other relevant circumstances can include the type of crime at issue; the detained individual's suspected involvement in such a crime; and the searching officer's experience with such crimes and their associated weapon use in the particular location of the detention. (E.g., *People v. Limon* (1993) 17 Cal.App.4th 524, 529-530, 534 [officer knew from experience that particular area in question was known for weapons and drugs] [citation]." (*Jeremiah S.*, *supra*, 41 Cal.App.5th at p. 306.)

Terry and its progeny make clear that police officers may not patsearch every individual they encounter, even though a standard procedure of doing so might increase officer safety. (See *Santos v. Superior Court* (1984) 154 Cal.App.3d 1178, 1184-1186 [patsearch invalidated where officer's search was based on standard procedure, officer's discretion, and his training].) And an officer's initial suspicions may be dispelled by other facts encountered at the scene, rendering a patsearch invalid. (See *Terry v. Ohio, supra,* 392 U.S. at p. 28 [suggesting that a suspect's response to an officer's approach might be sufficient to dispel reasonable suspicion that suspect is armed]; *Thomas*, *supra*, 818 F.3d at p. 877.)

A minor may move to suppress evidence obtained as a result of an unlawful patsearch. (§ 700.1.) In reviewing a ruling on a motion to suppress, we defer to the lower court's express and implied findings of fact if they are supported by substantial evidence. (*People v. Glaser* (1995) 11 Cal.4th 354, 362 (*Glaser*); *In re William V.* (2003) 111 Cal.App.4th 1464, 1468.) In determining whether, on the facts so found, the seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. (*Glaser,* at p. 363.)

B. The Totality of the Circumstances Does Not Support the Patsearch

The fact that J.S. was in a vehicle suspected of being involved in earlier purse snatching robberies, without more, does not provide reasonable suspicion he was armed and dangerous. *Jeremiah S* is instructive. In that case, the appellate court concluded there was no reasonable suspicion a juvenile, who had been detained because he matched the description of a robbery suspect, was armed and dangerous. (*Jeremiah S.*, *supra*, 41 Cal.App.5th at pp. 303, 307.) The officer there testified he conducted the patsearch because "it was his experience that robbers tend to have weapons." (*Ibid.*) The officer "admitted he had no information indicating the reported robbery involved a weapon, and he acknowledged that [defendant] was cooperative during the stop and that nothing about [his] appearance, behavior, or actions caused him to think [defendant] had a weapon." (*Ibid.*)

The circumstances here are not materially different from *Jeremiah S.* Here, Deputy Murad testified he conducted a patsearch on J.S. because he was concerned for his own safety. More specifically, Deputy Murad believed J.S. and the driver

could be armed because of their possible involvement in a series of robberies. There was, however, no report of a weapon used in the purse snatching robberies.

In support of his argument, the Attorney General cites *People v. Osborne* (2009) 175 Cal.App.4th 1052, where an appellate court found it reasonable for an officer to anticipate a suspected burglar was armed. (*Id.* at p. 1057.) There, police happened upon a burglary in progress. (*Ibid.*) When the officer approached the vehicle, he observed tools, including a screwdriver, in close proximity to defendant. (*Ibid.*) In contrast, here, Deputy Murad did not testify he saw any tools or anything that could be used as a weapon near J.S. or anywhere else in the vehicle.

As the appellate court in *Jeremiah S.* explained, "[a] per se type of rule that automatically permits a patsearch for every lawfully detained robbery suspect would be at odds with established Fourth Amendment jurisprudence. First and foremost, such a rule would contravene the 'fact driven' and 'individualized' nature of the high court's test for evaluating these 'severe, though brief' intrusions. Not only would a per se rule undermine the requirement that an officer provide specific and articulable facts supporting a reasonable apprehension of an armed suspect, but it would also seem to set up a rebuttable presumption that impermissibly shifts the burden to the defendant to prove the unreasonableness of a challenged search." (*Jeremiah S.*, *supra*, 41 Cal.App.5th at p. 307, citations omitted.)

"Second, a per se rule would conflate the different standards and justifications for *Terry* stops and frisks. A lawful frisk does not inevitably follow from a lawful stop, and each intrusion—the stop and the frisk—requires a separate analysis

with its reasonableness independently determined. As a more 'severe' intrusion upon personal security than a stop, a frisk must 'be strictly circumscribed by the exigencies which justify its initiation'—namely, the search for weapons. A per se rule that allows a frisk automatically after a stop for suspected robbery would threaten to 'destroy the necessary distinction between the stop and frisk.'" (*Jeremiah S.*, *supra*, 41 Cal.App.5th at pp. 307-308, citations omitted.)

"Third, it bears emphasizing that the crime of robbery in California encompasses 'a broad range of conduct' and 'includes a variety of unacceptable behavior.' Robbery is 'accomplished by means of force or fear', but both need not be present, and the possession or use of a weapon is not an element of the crime. To meet the force element, the degree of force need only be sufficient to overcome the victim's resistance." (*Jeremiah S., supra*, 41 Cal.App.5th at p. 308, citations omitted.)

Here, the suspected crime was a purse snatching robbery and there was no report of a weapon being used. Moreover, two of the purse snatching robberies happened in early February and one occurred two days before the Elantra was pulled over. Therefore, it was not reasonable that the vehicle and driver's involvement in a purse-snatch robbery would lead Deputy Murad to believe the passenger, J.S., was armed and dangerous.

The Attorney General also points to the officer's testimony that J.S. appeared nervous. Deputy Murad testified he believed J.S. could be armed because during their conversation, J.S. was "kind of fidgety," "kind of at unease," "didn't make eye contact," and gave "very short answers." Moreover, J.S. was "quiet" and had "a sense of guilt or sense of something that he knew he was caught doing . . . ." Based on J.S.'s demeanor, Deputy Murad

"knew something wasn't right." As Deputy Murad asked J.S. to get out of the vehicle, J.S.'s hands were very shaky. The conversation between Deputy Murad and J.S. before the patsearch lasted "seconds."

As the Attorney General notes, "[n]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion. [Citation.]" *(In re H.M., supra*, 167 Cal.App.4th at p. 144; see also *id.* at p. 141 ["The facts that [the minor] was running through traffic in an area known for 18th Street gang activity, was looking around, appeared nervous, and was known to one of the officers, coupled with [the officer]'s experience in the area and the fact he was present to investigate a shooting that had occurred one block away the day before, justified the patsearch."]; *People v. Fews* (2018) 27 Cal.App.5th 553, 561 (*Fews*) ["Taken together, [a defendant]'s evasive and uncooperative conduct, combined with the high-crime area in which the traffic stop took place, the odor and presence of marijuana, and [a defendant]'s continuous and furtive movements inside [a vehicle], were sufficiently unusual to raise the officers' suspicions that [defendants] were involved in criminal activity related to drugs and could be armed.]")

However, nervousness alone does not provide a sufficient basis for a frisk. A defendant's nervousness "could understandably result from extended police questioning because of a 'traffic violation.' [¶] . . . . Many individuals who are accosted and queried by a police officer become both upset and desirous of the earliest possible termination of an uncomfortable situation." (*People v. Lawler* (1973) 9 Cal.3d 156, 162.) Highly publicized acts of police violence against minorities may also cause persons stopped by the police to be nervous or apprehensive.

Here, unlike the defendants in the cases cited by the Attorney General, *Fews* and *In re H.M.*, Deputy Murad described J.S. as compliant and responsive. Moreover, J.S. was "not difficult" and answered all of Deputy Murad's questions. J.S. exited the vehicle when asked to do so and was compliant when Deputy Murad grabbed his hand. There was nothing in Deputy Murad's testimony to indicate J.S. was evasive. We also note Deputy Murad did not suggest J.S. made any furtive movements nor was he reaching for his waistband, which might have suggested he may be concealing a weapon. Instead, Deputy Murad testified J.S. made only the motions he was instructed to make. Finally, Deputy Murad did not testify he saw a bulge in J.S.'s pants or anywhere else to indicate he had a weapon. As noted above "[a]n inchoate and unparticularized suspicion or hunch is not sufficient, nor is the fact the officer acted in good faith. (*Terry v. Ohio, supra*, at pp. 22, 27.)" (*In re H.M., supra*, 167 Cal.App.4th at p. 144.) Here, other than Deputy Murad's feeling that "something wasn't right," there is nothing in the record to give rise to reasonable suspicion J.S. was armed and dangerous.

Next, the Attorney General alleges the patsearch was lawful as Deputy Murad smelled burnt marijuana. "In 2016, Proposition 64 legalized the possession of up to 28.5 grams of marijuana by individuals 21 years or older. ([Health & Saf. Code] § 11362.1, subd. (a)(1).) The use and possession of marijuana is not unconditional, however; there are various statutory provisions proscribing such use and possession in certain circumstances. (See, e.g., Health & Saf. Code, § 11362.3; Veh. Code, § 23222, subd. (b).) Notwithstanding any other proscription by law, [Health and Safety Code] section 11362.1, subdivision

(c) provides that '[c]annabis and cannabis products involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest.' Thus, [Health and Safety Code] section 11362.1, subdivision (c) does not apply when the totality of the circumstances gives rise to a fair probability that an existing marijuana regulation was violated when the search occurred. (*People v. Fews, supra*, 27 Cal.App.5th at p. 563.)" (*People v. Johnson* (2020) 50 Cal.App.5th 620, 625-626, fn. omitted.)

As the Attorney General notes, the possession and consumption of cannabis is legal only for those 21 and older. (Health & Saf. Code, § 11362.1.) Driving under the influence of marijuana also is illegal, as is driving while in possession of an open container of marijuana. (Veh. Code, §§ 23152, subd. (f); 23222, subd. (b)(1); cf. *People v. McGee* (2020) 53 Cal.App.5th 796, 804-805 [unsealed bag of marijuana in car established probable cause to search car; possession of open container of cannabis while driving or riding in motor vehicle remains illegal].) The Attorney General cites *People v. Collier* (2008) 166 Cal.App.4th 1374 (*Collier*), in support of his position. *Collier* was decided before the passage of Proposition 64 which legalized recreational marijuana. In *Collier,* an appellate court found it reasonable for a deputy to patsearch a passenger "based on officer safety and the presence of drugs" where the car smelled of marijuana and a passenger was wearing baggy clothing capable of concealing a weapon. (*Collier*, *supra*, 166 Cal.App.4th at pp. 1376-1378.) Additionally, the Attorney General cites *Fews*, *supra*, 27 Cal.App.5th at p. 561, a post-Proposition 64 case. There, an appellate court found a patsearch was justified where marijuana

was present in a vehicle driven in a high-crime area. (*Id.* at p. 557.) Moreover, the officer observed a passenger make furtive movements in the vehicle. (*Ibid.*) Finally, the driver of the vehicle had a half-burnt marijuana cigar in his hands. (*Ibid.*)

When asked whether he patted J.S. down in order to locate the source of the odor of burnt marijuana, Deputy Murad clarified, "the patsearch was conducted for officer safety." However, the report prepared after the arrest indicated Deputy Murad conducted the patsearch to locate the source of the scent of the burnt marijuana. Moreover, Deputy Murad relayed to Deputy Sanchez that he conducted the patsearch to locate the source of the burnt marijuana scent. Deputy Murad ultimately discovered a small amount of marijuana and a vape pen in the vehicle. Deputy Murad did not indicate he knew J.S. was a minor at the time of the search. Nor did J.S. appear to be under the influence. Additionally, because J.S. was a passenger, Deputy Murad could not have determined he was illegally driving while smoking marijuana. Finally, Deputy Murad did not see J.S. in possession of any marijuana nor did he see any open containers containing marijuana before he performed the search. Deputy Murad did not see any smoke emanating from the vehicle when the driver opened his window. Deputy Murad, therefore, did not have reason to know J.S. was engaged in an illegal activity when J.S. was in the vehicle. In sum, the circumstances did not give rise to a fair probability that J.S. had violated a marijuana law when the search occurred.

With respect to the Attorney General's other justifications for the patsearch, we note Deputy Murad did not cite the late hour as grounds for his safety concern. Instead, he stated the

traffic stop occurred early in the afternoon and there was plenty of daylight.

Additionally, at the time of the patsearch, Deputy Murad was alone in his patrol vehicle. There were, however, four other deputies within the vicinity. Moreover, at the time Deputy Murad patted down J.S., the driver was already in handcuffs in the police vehicle. While Deputy Murad testified the windows were blacked out, the driver's door was open and he could see J.S. in his seat while he put the driver in the patrol vehicle. Furthermore, at no time during the interaction did deputy Murad take out his weapon.

In sum, while the circumstances may have supported a detention, they did not, either singularly or collectively, give rise to a reasonable suspicion defendant was violent, armed, or dangerous, as is necessary to support a patsearch. As in *In re H.H.* (2009) 174 Cal.App.4th 653, "[w]e recognize that '[t]he judiciary should not lightly second-guess a police officer's decision to perform a patdown search for officer safety. (*Id.* at p. 660.) The lives and safety of police officers weigh heavily in the balance of competing Fourth Amendment considerations.' [Citation.] Here, however, there simply were no specific and articulable facts [offered] at the suppression hearing [from which the officer reasonably could have anticipated] that the minor was armed and dangerous." (*Ibid.*)

DISPOSITION

The jurisdiction and disposition orders are reversed. On remand, the juvenile court shall vacate its order denying the suppression motion, enter a new order granting the motion, and allow the minor to withdraw his plea.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CURREY, J.

We concur:

WILLHITE, Acting P.J.

COLLINS, J.